

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

ORIGINAL

In the matter of)
)
Provision of Directory Listing)
Listing Information under the)
Telecommunications Act of 1934, as amended)
)
)

CC Docket No. 99-273

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FEDERAL COMMUNICATIONS COMMISSION
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To: The Commission

Reply Comments of the Yellow Pages Publishers Association

October 28, 1999

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SUMMARY

The Yellow Pages Publishers Association ("YPPA") is concerned that independent directory assistance providers are attempting to merge the regulatory treatment of directory assistance and directory publishing. These are two distinct businesses and the Commission should not force a convergence through regulatory fiat.

Neither the legislative history of section 222(e) nor the dictionary definitions of "publishing" and "directory" lend credence to the argument that Congress intended that section 222(e) apply to directory assistance. Additionally, people have an expectation of privacy when information is divulged during a telephone conversation. To claim that directory assistance is a public utterance belies that expectation.

The Commission should resist the temptation to find a solution for independent directory assistance providers by expanding the use of section 222(e). Section 222(e) was written for the benefit of directory publishers, and Congress had no intention of including directory assistance in this provision. Clearly Congress views directory publishing and directory assistance as separate, and the Commission should not try and blur the lines through this proceeding.

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Reply Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association ("YPPA") by its attorneys, hereby submits reply comments in response to comments filed on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. YPPA is the largest trade association of Yellow Pages publishers in North America, representing members engaged in all aspects of the directory business. YPPA addresses its reply comments to comments made in the proceeding affecting the directory publishing business.

I. Definition of Directory Publishing

YPPA is concerned that independent directory assistance providers are attempting to merge the regulatory treatment of directory assistance and directory publishing. As YPPA noted in our initial comments, these are two distinct businesses and the Commission should not force a convergence through regulatory fiat.

Many comments supporting the proposition that Congress intended section 222(e) to apply to directory assistance providers use the dictionary definition of "publish" to claim that orally transmitting a directory listing qualifies as "publishing directories in any format" under section 222(e).^{1/} Media One Telecommunications, Inc., for example, uses the Black's Law Dictionary definition of publish to say it means "to utter."^{2/} Media one, however, does not bother to use the Black's Law Definition of "directory." Black's defines directory as "[b]ook containing names, addresses, and occupations of inhabitants of city. Also any list or compilation, usually in book or pamphlet form, of persons, professional organizations, firms or corporations forming some class separate and distinct from others..."^{3/} To claim that orally transmitting one listing constitutes the publication of a directory stretches the definitions beyond reason.

II. Expectation of Privacy

The fact that directory assistance is usually obtained through the use of the telephone raises additional issues. In using a telephone, one has an expectation of privacy. Indeed, there are laws that prohibit the divulgence of the content of telephone conversations without

^{1/} See, *e.g.*, Comments of INFONXX, Inc. at 29; Comments of Teltrust, Inc. at 10.

^{2/} Media One Telecommunications, Inc. comments at 5.

^{3/} Black's Law Dictionary 414 (5th Ed. 1979).

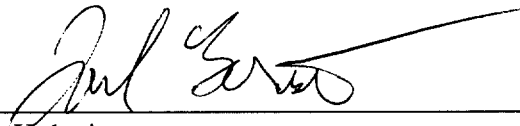
proper court authority.^{4/} Most telephone users do not expect their telephone conversations to be made public. Making information public is a critical component of "publishing." To claim that a telephone call to directory assistance is now a public divulgence of that information would shock most users of the directory assistance service. YPPA believes that most users (if not all) of directory assistance expect that the information shared in that telephone call is only shared between the participants of the call.

III. Conclusion

YPPA urges the Commission to resist the temptation to find a solution for independent directory assistance providers by expanding the use of section 222(e). Section 222(e) was written for the benefit of directory publishers, and Congress had no intention of including directory assistance in this provision. As noted in YPPA's comments, directory assistance is mentioned by name in section 251(b)(3), but not mentioned in section 222(e) nor any of the accompanying legislative history. This is clear evidence that Congress views directory publishing and directory assistance as separate, and the Commission should not try and blur the lines through this proceeding.

^{4/} See, 18 U.S.C. 2511. The Electronic Communications Privacy Act was intended to give some assurances that telephone conversations are private among the parties, and not available for interception. The provision also prohibits divulging information obtained as a result of an unauthorized interception.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Albert Halprin", written over a horizontal line.

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